

(Lat. 38°53'38" N., long. 122°59'44" W.)

Within a 4.3-mile radius of the South Lake Tahoe Airport.

Issued in Los Angeles, California, on June 28, 2005.

**Leonard Mobley,**

*Acting Area Director, Western Terminal Operations.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Corpus Christi-04-006]

RIN 1625-AA87

#### **Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing an established security zone in the Port of Port Lavaca-Point Comfort. Under the Maritime Transportation Security Act of 2002, owners or operators of local facilities are required to take specific action to improve facility security. As such, a security zone around local facilities will no longer be necessary under normal conditions. This final rule removes an established security zone.

**DATES:** This rule is effective on August 8, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP Corpus Christi 04-006], and are available for inspection or copying at Sector Corpus Christi Prevention Department, 555 N. Carancahua, Suite 500, Corpus Christi, TX 78478, between 7:30 a.m. 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ensign John Oscar, Marine Safety Office Corpus Christi, at (361) 888-3162, ext. 534.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

On February 25, 2005, the Coast Guard published a Notice of Proposed Rule Making and request for comments entitled "Security Zones; Port of Port Lavaca-Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus

Christi, TX" in the **Federal Register** (70 FR 9263). As of March 28, 2005, we have received five written comments on that Notice of Proposed Rulemaking. No public meeting was requested so one was not held.

As indicated in our "Discussion of Comments and Changes" section below, we have considered these comments in this final rule.

#### **Discussion of Comments and Changes**

As of March 28, 2005, we received five written comments on the NPRM. These comments focused generally on one concern, which is the increase in maritime security risk due to commercial and recreational boating. Each section of this concern is discussed in more detail in the following paragraphs.

*Increased Maritime Security Risk.* All five comments express concern regarding the increase in maritime security risk that would accompany the removal of the Port of Port Lavaca-Point Comfort Security Zone. Each comment states that the Port of Port Lavaca-Point Comfort has several shipping receiving and storage terminals for a variety of liquid chemicals, and it also has many foreign flagged vessels arriving and departing the port every day. Further, the comments state that the prohibition of commercial and recreational vessels in the established security zone has provided a much-needed additional tier of security protection for these terminals, as well as the vessel and cargo users. These comments state that the removal of the established security zone would create an increased maritime security risk for the port and its users.

To address these comments, the Coast Guard's position regarding the following issues of waterfront facility security, foreign flagged vessel security, and commercial and recreational vessel security in the Port of Port Lavaca-Point Comfort will be explained separately.

*Facility Security.* Under the authority of the Maritime Transportation Security Act (MTSA) of 2002, the Coast Guard published a final rule on October 22, 2003, entitled "Facility Security" in the **Federal Register** (68 FR 60515) that established 33 CFR part 105. That final rule became effective November 21, 2003, and provides security measures for certain facilities, including those facilities that exist on waterways in the Port of Port Lavaca-Point Comfort area. Section 105.200 of 33 CFR requires owners or operators of these facilities to designate security officers for facilities, develop security plans based on security assessments and surveys, implement security measures specific to the

facility's operations, and comply with Maritime Security Levels. Under 33 CFR 105.115, the owners or operators of these facilities must have submitted to the Captain of the Port, by December 31, 2003, a Facility Security Plan as described in Subpart D of 33 CFR 105, or if intending to operate under an approved Alternative Security Program as described in 33 CFR 101.130, a letter signed by the facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use. Section 105.115 of 33 CFR part 105 also requires facility owners or operators to be in compliance with 33 CFR part 105 on or before July 1, 2004.

Only a small number of waterfront facilities exist within the area protected by the security zone. Each of these facilities submitted a comprehensive facility security plan (FSP), which has been thoroughly reviewed and approved by the Coast Guard. Additionally, each facility was examined for compliance with their FSP within the last twelve months. All facilities were found to be in full compliance with their FSP. Additionally, facilities subject to the MTSA must have the capability to continuously monitor, among other things, the facility and its approaches on land and water, and vessels at the facility and areas surrounding the vessels.

*Vessel Security.* Each foreign flagged vessel greater than 300 gross tons that intends to enter the Port of Port Lavaca-Point Comfort must submit a notice of arrival to the Coast Guard through the National Vessel Movement Center in accordance with 33 CFR part 160. As part of this notification process, detailed information regarding the times of arrival and departure, on board cargo, crew, last five ports visited and other pertinent information must be supplied in advance of the vessel's arrival. MSO Corpus Christi processes this arrival information, and using standard Coast Guard criteria, determines if a vessel merits special consideration before being allowed entry into the United States. Such vessels are characterized as high interest vessels (HIV). Those HIVs are boarded offshore to verify the integrity of the vessel's security in order to ensure the protection of both the vessel and the port. In all cases, no vessel is allowed entry into any port unless all security concerns have been adequately addressed.

The Coast Guard calculated that for the past 5 years the average number of vessels arriving each year was 330. Between April 1, 2004, and March 31, 2005, a total of 364 vessel arrivals occurred. Of that, only 20 vessels, or 5.5

percent, were designated as a HIV. In accordance with current policy, the Coast Guard has boarded all HIVs that entered the Port of Port Lavaca-Point Comfort.

In order to address ship specific security, all foreign flagged vessels exceeding 500 gross tons are subject to International Ship and Port Facility Security (ISPS) Code and must possess an International Ship Security Certificate (ISSC). A vessel that possesses a valid ISSC has been found to have an acceptable level of security as determined by the issuing authority. For every vessel that indicates it holds a valid ISSC, an initial verification exam is conducted by the Coast Guard before allowing the vessel into the United States. Furthermore, the Coast Guard verifies ISPS compliance through regular port state control examinations, which are conducted on foreign flagged vessels while in port. Vessels found not in compliance are either expelled from port or detained until satisfactory corrections have been made.

*Commercial and Recreational Vessel Security.* Aside from commercial deep draft shipping, commercial towing vessels, and barges that have legitimate business at the facilities in the existing security zone, the only commercial vessels of concern would be fishing vessels. However, in April of 1988, the Texas Department of Health (TDH) issued a "closure order" for an area that includes the existing security zone that prohibits the taking of finfish and crabs for consumption. This order is still effective. As such, commercial and recreational fishing vessels should not be present in the area of the facilities even after the security zone is removed.

In order to maintain the security of the port of Port Lavaca-Point Comfort, and to verify the intentions of vessels in the port area, the Coast Guard conducts regular, highly visible waterborne patrols using both Coast Guard and Coast Guard Auxiliary vessels, random shore side patrols to ensure facility security is executed properly, and overflights using Coast Guard aircraft. State and local authorities including Texas Parks and Wildlife, Jackson County Sheriff's Office, and the Texas General Land Office conduct other patrols. These agencies maintain close contact with the Coast Guard while on patrol.

*Summary of response to comments.* The Coast Guard contends that security measures implemented at facilities and on vessels as required by the MTSA and ISPS Code, the Coast Guard's efforts to screen and board arriving foreign flagged vessels, and efforts to conduct highly visible patrols of the Port Lavaca-Point Comfort area, provide a

substantial layered defense mechanism against security threats. The Coast Guard finds that removing the established security zone in the Port Lavaca-Point Comfort area will not result in an unacceptable increase in the level of maritime security risk. No changes from the proposed rule have been made except for grammatical changes in paragraphs (a), (b)(1), and (b)(2), of 33 CFR 165.809 to change references from security zones to security zone.

#### **Background and Purpose**

On October 17, 2002, the Coast Guard published a final rule entitled "Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX", in the **Federal Register** (67 FR 64046). That final rule established two security zones that appear in 33 CFR 165.809. The first security zone is entitled "Port of Port Lavaca-Point Comfort" and included all waters between the Dredge Island Bridge at 28°39'30" N, 96°34'20" W and a line drawn between points 28°38'10" N, 96°33'15" W and 28°38'10" N, 96°34'45" W, including the Point Comfort turning basin and adjacent Alcoa Channel. The second security zone is entitled "Port of Corpus Christi Inner Harbor" and included all waters of the Corpus Christi Inner Harbor from the Inner Harbor Bridge (U.S. Hwy 181) to, and including the Viola Turning Basin.

As a result of the Maritime Transportation Security Act, the International Ship and Port Facility Security Code, and current security actions performed by the Coast Guard, state and local authorities, the Coast Guard finds that the existing security zone for the Port of Port Lavaca-Point Comfort is no longer necessary under normal conditions.

#### **Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary as this rule removes a portion of a regulation that is no longer necessary.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### **Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.809, revise paragraphs (a), (b)(1), and (b)(2) to read as follows:

### § 165.809 Security Zone; Port of Corpus Christi Inner Harbor, Corpus Christi, TX.

(a) *Location.* The following area is designated as a security zone: all waters of the Corpus Christi Inner Harbor from the Inner Harbor Bridge (U.S. Hwy 181) to, and including the Viola Turning Basin.

(b) *Regulations.* (1) No recreational vessels, passenger vessels, or commercial fishing vessels may enter the security zone unless specifically authorized by the Captain of the Port Corpus Christi or a designated representative.

(2) Recreational vessels, passenger vessels and commercial fishing vessels requiring entry into the security zone must contact the Captain of the Port Corpus Christi or a designated representative. The Captain of the Port may be contacted via VHF Channel 16 or via telephone at (361) 888–3162 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Corpus Christi or a designated representative.

\* \* \* \* \*

Dated: June 9, 2005.

**J. H. Korn,**

*Captain, U.S. Coast Guard, Captain of the Port Corpus Christi.*

[FR Doc. 05–13384 Filed 7–6–05; 8:45 am]

**BILLING CODE 4910–15–P**

## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Part 258

[Docket No. 2005–4 CARP SRA–Digital]

### Rate Adjustment for the Satellite Carrier Compulsory License

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office of the Library of Congress is publishing the royalty rates for the retransmission of digital over-the-air television broadcast signals by satellite carriers under the statutory license.

**EFFECTIVE DATE:** January 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Associate General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC